



**SCHEDULE Continued**

Item No.	Supplies/Services	Quantity	Unit	Unit Price	Amount
1000	Administrative Support Services, Western Area Power Administration, Sierra Nevada Region located at 114 Parshore Drive, Folsom, CA 95630. The Contractor shall provide all labor to meet the requirements for Administrative Support Services IAW the attached Performance Work Statement (PWS) dated Feb 2010. Base Period of Performance: 1 July 2010 through 30 June 2011.	12	MO	\$ _____	\$ _____
1001	Overtime/Travel/Training Expenses IAW PWS, paragraph 2.6, 2.7, 2.8 in support of CLIN 1000. Prior approval by the COR and/or Contracting Officer is required. No invoices will be paid without prior approval. All travel costs must be submitted and reimbursed IAW the Federal Travel Regulations and Western Clause WES-H-1014.	1	LS	NTE\$ <u>55,000.00</u>	NTE\$ <u>55,000.00</u>
2000	Administrative Support Services, Western Area Power Administration, Sierra Nevada Region located at 114 Parshore Drive, Folsom, CA 95630. The Contractor shall provide all labor to meet the requirements for Administrative Support Services IAW the attached Performance Work Statement (PWS). Option Year One (1) Period of Performance: 1 July 2011 through 30 June 2012.	12	MO	\$ _____	\$ _____
2001	Overtime/Travel/Training Expenses IAW PWS, paragraph 2.6, 2.7, 2.8 in support of CLIN 2000. Prior approval by the COR and/or Contracting Officer is required. No invoices will be paid without prior approval. All travel costs must be submitted and reimbursed IAW the Federal Travel Regulations and Western Clause WES-H-1014.	1	LS	NTE\$ <u>55,000.00</u>	NTE\$ <u>55,000.00</u>
3000	Administrative Support Services, Western Area Power Administration, Sierra Nevada Region located at 114 Parshore Drive, Folsom, CA 95630. The Contractor shall provide all labor to meet the requirements for Administrative Support Services IAW the attached Performance Work Statement (PWS). Option Year Two (2) Period of Performance: 1 July 2012 through 30 June 2013.	12	MO	\$ _____	\$ _____
3001	Overtime/Travel/Training Expenses IAW PWS, paragraph 2.6, 2.7, 2.8 in support of CLIN 3000. Prior approval by the COR and/or Contracting Officer is required. No invoices will be paid without prior approval. All travel costs must be submitted and reimbursed IAW the Federal Travel Regulations and Western Clause WES-H-1014.	1	LS	NTE\$ <u>55,000.00</u>	NTE\$ <u>55,000.00</u>
4000	Administrative Support Services, Western Area Power Administration, Sierra Nevada Region located at 114 Parshore Drive, Folsom, CA 95630. The Contractor shall provide all labor to meet the requirements for Administrative Support Services IAW the attached Performance Work Statement (PWS). Option Year Three (3) Period of Performance: 1 July 2013 through 30 June 2014.	12	MO	\$ _____	\$ _____
4001	Overtime/Travel/Training Expenses IAW PWS, paragraph 2.6, 2.7, 2.8, in support of CLIN 4000. Prior approval by the COR and/or Contracting Officer is required. No invoices will be paid without prior approval. All travel costs must be submitted and reimbursed IAW the Federal Travel Regulations and Western Clause WES-H-1014.	1	LS	NTE\$ <u>55,000.00</u>	NTE\$ <u>55,000.00</u>
5000	Administrative Support Services, Western Area Power Administration, Sierra Nevada Region located at 114 Parshore Drive, Folsom, CA 95630. The Contractor shall provide all labor to meet the requirements for Administrative Support Services IAW the attached Performance Work Statement	12	MO	\$ _____	\$ _____

## SCHEDULE Continued

Item No.	Supplies/Services	Quantity	Unit	Unit Price	Amount
5001	<p>(PWS). Option Year Four (4) Period of Performance: 1 July 2014 through June 30 2015</p> <p>Overtime/Travel/Training Expenses IAW PWS, paragraph 2.6, 2.7, 2.8 in support of CLIN 5000. Prior approval by the COR and/or Contracting Officer is required. No invoices will be paid without prior approval. All travel costs must be submitted and reimbursed IAW the Federal Travel Regulations and Western Clause WES-H-1014.</p> <p>This procurement is awarded IAW FAR 19.8 and 15 USC 637(a) as a Partnership Agreement between US SBA and the Department of Energy.</p> <p>US SBA Servicing Office: US Small Business Administration, Sacramento District Office, 6501 Sylvan Rd, Citrus Heights, CA 95610, Attn: Paul Tavernia, Lead Business Development Specialist/8(a) 916-735-1720, paul.tavernia@sba.gov</p> <p>Reference Acceptance # 0931/09/907340/01</p>	1	LS	<p>NTE <u>\$55,000.00</u></p> <p>GRAND TOTAL:</p>	<p>NTE<u>\$55,000.00</u></p> <p>\$ _____</p>

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**52.212-4 CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (MAR 2009)**

(a) "Inspection/Acceptance." The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights--

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) "Assignment." The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) "Changes." Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) "Disputes." This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) "Definitions." The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) "Excusable delays." The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) "Invoice."

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include--

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, contract line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer-Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) "Patent indemnity." The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) "Payment."--

(1) "Items accepted." Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) "Prompt payment." The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(3) "Electronic Funds Transfer (EFT)." If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) "Discount." In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) "Overpayments." If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall--

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the--

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contractline item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) Interest.

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in

(i) (6) (v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if--

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on--

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) "Risk of loss." Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) "Taxes." The contract price includes all applicable Federal, State, and local taxes and duties.

(l) "Termination for the Government's convenience." The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) "Termination for cause." The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) "Title." Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) "Warranty." The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) "Limitation of liability." Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) "Other compliances." The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) "Compliance with laws unique to Government contracts." The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; Section 1553 of the American Recovery and Reinvestment Act of 2009 relating to whistleblower protections for contracts funded under that Act; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) "Order of precedence." Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
- (3) The clause at 52.212-5.
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) The Standard Form 1449.
- (8) Other documents, exhibits, and attachments.
- (9) The specification.

(t) "Central Contractor Registration (CCR)."

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)

(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to

(A) change the name in the CCR database;

(B) comply with the requirements of Subpart 42.12; and

(C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for



the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

(End of Clause)

#### **52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (FEB 2010)**

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clause, which is incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

- (1) 52.222-50, Combating Trafficking in Persons (Feb 2009)  
(22 U.S.C. 7104(g)).

\_\_\_\_ Alternate I (Aug 2007) of 52.222-50 (22 U.S.C. 7104(g)).

- (2) 52.233-3, Protest after Award (Aug 1996) (31 U.S.C. 3553).  
(3) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004)  
(Pub. L. 108-77, 108-78).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

- \_\_\_\_ (1) 52.203-6, Restrictions on Subcontractor Sales to the  
Government  
(Sep 2006), with Alternate I (Oct 1995) (41 U.S.C. 253g and  
10 U.S.C. 2402).  
\_\_\_\_ (2) 52.203-13, Contractor Code of Business Ethics and Conduct  
(Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251  
note)). (15 U.S.C. 657a).  
\_\_\_\_ (3) 52.203-15, Whistleblower Protections Under the American  
Recovery  
and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111-5).  
(Applies to contracts funded by the American Recovery and  
Reinvestment Act of 2009.)  
\_\_\_\_ (4) 52.204-11, American Recovery and Reinvestment Act--  
Reporting  
Requirements (MAR 2009) (Pub. L. 111-5).  
\_\_\_\_ (5) 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999)  
(15 U.S.C. 657a).  
\_\_\_\_ (6) 52.219-4, Notice of Price Evaluation Preference for  
HUBZone  
Small Business Concerns (July 2005) (if the offeror elects  
to waive the preference, it shall so indicate in its offer)  
(15 U.S.C. 657a).  
(7) [Reserved]  
(8)  
\_\_\_\_ XX (i) 52.219-6, Notice of Total Small Business Set-Aside  
(June 2003) (15 U.S.C. 644).  
\_\_\_\_ (ii) Alternate I (Oct 1995) of 52.219-6.  
\_\_\_\_ (iii) Alternate II (Mar 2004) of 52.219-6.  
(9)  
\_\_\_\_ (i) 52.219-7, Notice of Partial Small Business Set-Aside  
(June 2003) (15 U.S.C. 644).  
\_\_\_\_ (ii) Alternate I (Oct 1995) of 52.219-7.

\_\_\_\_\_ (iii) Alternate II (Mar 2004) of 52.219-7.  
 2004) \_\_\_\_\_ (10) 52.219-8, Utilization of Small Business Concerns (May  
 (15 U.S.C. 637(d) (2) and (3)).  
 (11)  
 \_\_\_\_\_ (i) 52.219-9, Small Business Subcontracting Plan (Apr  
 2008) \_\_\_\_\_ (15 U.S.C. 637(d) (4)).  
 \_\_\_\_\_ (ii) Alternate I (Oct 2001) of 52.219-9.  
 \_\_\_\_\_ (iii) Alternate II (Oct 2001) of 52.219-9.  
 XX \_\_\_\_\_ (12) 52.219-14, Limitations on Subcontracting (Dec 1996) (15  
 U.S.C. \_\_\_\_\_ 637(a) (14)).  
 \_\_\_\_\_ (13) 52.219-16, Liquidated Damages--Subcontracting Plan (Jan  
 1999) \_\_\_\_\_ (15 U.S.C. 637(d) (4) (F) (i)).  
 (14)  
 \_\_\_\_\_ (i) 52.219-23, Notice of Price Evaluation Adjustment for  
 Small Disadvantaged Business Concerns (Oct 2008) (10 U.S.C. 2323)  
 (if the offeror elects to waive the adjustment, it shall so  
 indicate in its offer).  
 \_\_\_\_\_ (ii) Alternate I (June 2003) of 52.219-23.  
 \_\_\_\_\_ (15) 52.219-25, Small Disadvantaged Business Participation  
 Program- Disadvantaged Status and Reporting (Apr 2008) (Pub. L.  
 103-355, section 7102, and 10 U.S.C. 2323).  
 \_\_\_\_\_ (16) 52.219-26, Small Disadvantaged Business Participation  
 Program-- Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section  
 7102, and 10 U.S.C. 2323).  
 \_\_\_\_\_ (17) 52.219-27, Notice of Total Service-Disabled Veteran-Owned  
 Small Business Set-Aside (May 2004) (15 U.S.C. 657 f).  
 XX \_\_\_\_\_ (18) 52.219-28, Post Award Small Business Program  
 Rerepresentation (Apr 2009) (15 U.S.C. 632(a) (2)).  
 XX \_\_\_\_\_ (19) 52.222-3, Convict Labor (June 2003) (E.O. 11755).  
 \_\_\_\_\_ (20) 52.222-19, Child Labor--Cooperation with Authorities and  
 Remedies (Aug 2009) (E.O. 13126).  
 XX \_\_\_\_\_ (21) 52.222-21, Prohibition of Segregated Facilities (Feb  
 1999).  
 XX \_\_\_\_\_ (22) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).  
 XX \_\_\_\_\_ (23) 52.222-35, Equal Opportunity for Special Disabled  
 Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans  
 (Sept 2006) (38 U.S.C. 4212).  
 XX \_\_\_\_\_ (24) 52.222-36, Affirmative Action for Workers with  
 Disabilities (Jun 1998) (29 U.S.C. 793).  
 XX \_\_\_\_\_ (25) 52.222-37, Employment Reports on Special Disabled  
 Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept  
 2006) (38 U.S.C. 4212).  
 \_\_\_\_\_ (26) 52.222-54, Employment Eligibility Verification (Jan  
 2009).  
 (Executive Order 12989). (Not applicable to the acquisition of  
 commercially available off-the-shelf items or certain other  
 types of commercial items as prescribed in 22.1803.)  
 (27)  
 \_\_\_\_\_ (i) 52.223-9, Estimate of Percentage of Recovered Material  
 Content for EPA-Designated Items (May 2008) (42 U.S.C.  
 6962(c) (3) (A) (ii)).

\_\_\_\_\_ (ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i) (2) (C)).  
 XX (28) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).  
 (29) \_\_\_\_\_ (i) 52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (Dec 2007) (E.O. 13423).  
 \_\_\_\_\_ (ii) Alternate I (Dec 2007) of 52.223-16.  
 (30) 52.225-1, Buy American Act-Supplies (June 2003) (41 U.S.C. 10a-10d).  
 (31) \_\_\_\_\_ (i) 52.225-3, Buy American Act-Free Trade Agreements-Israeli Trade Act (June 2009) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, Pub. L. 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, and 110-138).  
 \_\_\_\_\_ (ii) Alternate I (Jan 2004) of 52.225-3.  
 \_\_\_\_\_ (iii) Alternate II (Jan 2004) of 52.225-3.  
 seq., \_\_\_\_\_ (32) 52.225-5, Trade Agreements (Aug 2009) (19 U.S.C. 2501, et 19 U.S.C. 3301 note).  
 XX (33) 52.225-13, Restrictions on Certain Foreign Purchases (Jun 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).  
 \_\_\_\_\_ (34) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).  
 or \_\_\_\_\_ (35) 52.226-5, Restrictions on Subcontracting Outside Disaster Emergency Area (Nov 2007) (42 U.S.C. 5150).  
 Items \_\_\_\_\_ (36) 52.232-29, Terms for Financing of Purchases of Commercial (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).  
 1995) \_\_\_\_\_ (37) 52.232-30, Installment Payments for Commercial Items (Oct 41 U.S.C. 255(f), 10 U.S.C. 2307(f)).  
 XX (38) 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).  
 \_\_\_\_\_ (39) 52.232-34, Payment by Electronic Funds Transfer-Other than Central Contractor Registration (May 1999) (31 U.S.C. 3332).  
 3332). \_\_\_\_\_ (40) 52.232-36, Payment by Third Party (Feb 2010) (31 U.S.C. 3332).  
 U.S.C. \_\_\_\_\_ (41) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 552a).  
 (42) \_\_\_\_\_ (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631).  
 \_\_\_\_\_ (ii) Alternate I (Apr 1984) of 52.247-64.  
 (c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:  
 XX (1) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et seq.).  
 XX (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

Act- XX (3) 52.222-43, Fair Labor Standards Act and Service Contract  
 Price Adjustment (Multiple Year and Option Contracts) (Sep 2009)  
 (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).  
 Act- XX (4) 52.222-44, Fair Labor Standards Act and Service Contract  
 Price Adjustment (Sep 2009) (29 U.S.C. 206 and 41 U.S.C. 351,  
 et seq.).  
 Contract            (5) 52.222-51, Exemption from Application of the Service  
 Act to Contracts for Maintenance, Calibration, or Repair of  
 Certain Equipment--Requirements (Nov 2007)  
 (41 U.S.C. 351, et seq.).  
 Contract            (6) 52.222-53, Exemption from Application of the Service  
 Act to Contracts for Certain Services--Requirements (Feb 2009)  
 (41 U.S.C. 351, et seq.).  
           (7) 52.226-6, Promoting Excess Food Donation to Nonprofit  
 Organizations (Mar 2009) (Pub. L. 110-247).  
           (8) 52.237-11, Accepting and Dispensing of \$1 Coin (Aug 2007)  
 (31 U.S.C. 5112(p)(1)).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e )

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e) (1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause--

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (DEC 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(ii) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111-5). Applies to subcontracts funded under the Act.

(iv) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(v) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).

(vi) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(vii) [Reserved].

(viii) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et seq.).

(ix) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

Alternate I (Aug 2007) of 52.222-50 (22 U.S.C. 7104(g)).

(x) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (Nov 2007) (41 U.S.C. 351, et seq.).

(xi) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements (Feb 2009) (41 U.S.C. 351, et seq.).

(xii) 52.222-54, Employment Eligibility Verification (Jan 2009).

(xiii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xiv) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241 (b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of Clause)

#### **52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997)**

(a) "Exceptions from cost or pricing data."

(1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following paragraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) "Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) "Commercial item exception." For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include--

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an

exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) "Requirements for cost or pricing data." If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall prepare and submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

(End of Provision)

#### **952.215-70 KEY PERSONNEL (DEC 2000)**

(a) The personnel listed below or elsewhere in this contract PWS are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must:

(1) Notify the Contracting Officer reasonably in advance;

(2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and

(3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at DEAR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.

(b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel: Program Manager.

(End of clause)

#### **52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within thirty (30) days before the end of the contract period.

(End of Clause)

#### **52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)**

(a) The Government may extend the term of this contract by written notice to the Contractor within the term of the contract provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least sixty (60) days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed sixty (60) months

(End of Clause)

**52.219-18 NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS (JUN 2003)**

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer--

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)

(1) "Agreement." A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(2) The (To be specified at time of award) will notify the Western Area Power Administration Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of Clause)

**52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)**

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (If none, insert "None")	Identification No.

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the

apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to--

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with paragraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(End of Clause)

#### **52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003)**

(a) "Definitions." As used in this clause--

"Priority chemical" means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to Section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

"Toxic chemical" means a chemical or chemical category listed in 40 CFR 372.65.

(b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

(1) The emergency planning reporting requirements of Section 302 of EPCRA.

(2) The emergency notice requirements of Section 304 of EPCRA.

(3) The list of Material Safety Data Sheets, required by Section 311 of EPCRA.

(4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA.

(5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.

(6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of Sections 502 and 503 of Executive Order 13148.

(End of Clause)

#### **52.227-14 RIGHTS IN DATA--GENERAL (DEC 2007)**

(a) Definitions. As used in this clause--

DE-RP65-10WN86899



"Computer database" or "database means" a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

"Computer software"--

(1) Means

(i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

"Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

"Data" means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data" means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

"Limited rights" means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g) (3) if included in this clause.

"Limited rights data" means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

"Restricted computer software" means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

"Technical data" means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 403(8)).

"Unlimited rights" means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in--

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to--

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) Copyright--

(1) Data first produced in the performance of this contract.

(i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright in all other data first produced in the performance of this contract.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor--

(i) Identifies the data; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) Removal of copyright notices. The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) Release, publication, and use of data. The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except--

(1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g) (3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 253d, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e) (1) (i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e) (1) (iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e) (1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor--

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may--

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall--

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) [Reserved]

(h) Subcontracting. The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) Relationship to patents or other rights. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

#### **52.228-5 INSURANCE--WORK ON A GOVERNMENT INSTALLATION (JAN 1997)**

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective--

(1) For such period as the laws of the State in which this contract is to be performed prescribe; or

(2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

(End of Clause)

#### **52.232-19 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR (APR 1984)**

Funds are not presently available for performance under this contract beyond June 2011. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond June 2011 until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

(End of Clause)

**52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)**

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

(End of Clause)

**52.245-1 GOVERNMENT PROPERTY (JUN 2007)**

(a) Definitions. As used in this clause--

"Acquisition cost" means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use.

"Cannibalize" means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

"Contractor-acquired property" means property acquired, fabricated, or otherwise provided by the Contractor for performing a contract, and to which the Government has title.

"Contractor inventory" means--

(1) Any property acquired by and in the possession of a Contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;

(2) Any property that the Government is obligated or has the option to take over under any type of contract, e.g., as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

(4) "Contractor's managerial personnel" means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at any one plant or separate location; or

(3) A separate and complete major industrial operation.

"Demilitarization" means rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

"Discrepancies incident to shipment" means any differences (e.g., count or condition) between the items documented to have been shipped and items actually received.

"Equipment" means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use.

"Government-furnished property" means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract.

"Government property" means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property.

"Material" means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that

lose their individual identity through incorporation into an end-item. Material does not include equipment, special tooling and special test equipment.

"Nonseverable" means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

"Plant equipment" as used in this part, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

"Precious metals" means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

"Property" means all tangible property, both real and personal.

"Property Administrator" means an authorized representative of the Contracting Officer appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations relating to Government property in the possession of a Contractor.

"Provide" means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

"Real property" means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

"Sensitive property" means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

"Surplus property" means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA).

(b) Property management.

(1) The Contractor shall have a system to manage (control, use, preserve, protect, repair and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective control of Government property, consistent with voluntary consensus standards and/or industry-leading practices and standards for Government property management except where inconsistent with law or regulation. During the period of performance, the Contractor shall disclose any significant changes to their property management system to the Property Administrator prior to implementation.

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, disposition, or via a completed investigation, evaluation, and final determination for lost, damaged, destroyed, or stolen property. This requirement applies to all Government property under the Contractor's accountability, stewardship, possession or control, including its vendors or subcontractors (see paragraph (f)(1)(v) of this clause).

(3) The Contractor shall include the requirements of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.

(c) Use of Government property. The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer. The Contractor shall not modify, cannibalize, or make alterations to Government property unless this contract specifically identifies the modifications, alterations or improvements as work to be performed.

(d) Government-furnished property.

(1) The Government shall deliver to the Contractor the Government-furnished property described in this contract. The Government shall furnish related data and information needed for the intended use of the property. The warranties of

suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the Contractor as contractor-acquired property and subsequently transferred to another contract with this Contractor.

(2) The delivery and/or performance dates specified in this contract are based upon the expectation that the Government-furnished property will be suitable for contract performance and will be delivered to the Contractor by the dates stated in the contract.

(i) If the property is not delivered to the Contractor by the dates stated in the contract, the Contracting Officer shall, upon the Contractor's timely written request, consider an equitable adjustment to the contract.

(ii) In the event property is received by the Contractor, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, the Contracting Officer shall, upon the Contractor's timely written request, advise the Contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government's expense. Upon completion of the required action(s), the Contracting Officer shall consider an equitable adjustment to the contract (see also paragraph (f) (1) (ii) (A) of this clause).

(iii) The Government may, at its option, furnish property in an "as-is" condition. The Contractor will be given the opportunity to inspect such property prior to the property being provided. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for contract performance. Any repairs, replacement, and/or refurbishment shall be at the Contractor's expense.

(3)

(i) The Contracting Officer may by written notice, at any time--

(A) Increase or decrease the amount of Government-furnished property under this contract;

(B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract; or

(C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d) (3) (i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

(e) Title to Government property.

(1) The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(2) Fixed-price contracts.

(i) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause.

(ii) Title to each item of equipment, special test equipment and special tooling acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(iii) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract--

(A) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(B) Title to all other material shall pass to and vest in the Government upon--

(1) Issuance of the material for use in contract performance;

(2) Commencement of processing of the material or its use in contract performance; or

(3) Reimbursement of the cost of the material by the Government, whichever occurs first.

(3) Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts.

(i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon--

(A) Issuance of the property for use in contract performance;

(B) Commencement of processing of the property for use in contract performance; or

(C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(iii) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph

(e) (3) (iii) (collectively referred to as "Government property"), are subject to the provisions of this clause.

(f) Contractor plans and systems.

(1) Contractors shall establish and implement property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:

(i) Acquisition of Property. The Contractor shall document that all property was acquired consistent with its engineering, production planning, and material control operations.

(ii) Receipt of Government Property. The Contractor shall receive Government property (document the receipt), record the information necessary to meet the record requirements of paragraph (f) (1) (iii) (A) (1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.

(A) Government-furnished property. The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.

(B) Contractor-acquired property. The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

(iii) Records of Government property. The Contractor shall create and maintain records of all Government property accountable to the contract, including Governmentfurnished and Contractor-acquired property.

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

(1) The name, part number and description, manufacturer, model number, and National Stock Number (if needed for additional item identification tracking and/or disposition).

(2) Quantity received (or fabricated), issued, and balance-on-hand.

(3) Unit acquisition cost.

(4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).

(5) Unit of measure.

(6) Accountable contract number or equivalent code designation.

(7) Location.

(8) Disposition.

(9) Posting reference and date of transaction.

(10) Date placed in service.

(B) Use of a Receipt and Issue System for Government Material. When approved by the Property Administrator, the Contractor may maintain, in lieu of



formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.

(iv) Physical inventory. The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (e.g., overall reliability of the Contractor's system or the property is to be transferred to a follow-on contract).

(v) Subcontractor control.

(A) The Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss, damage, destruction or theft of Government property).

(B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.

(vi) Reports. The Contractor shall have a process to create and provide reports of discrepancies; loss, damage, destruction, or theft; physical inventory results; audits and self-assessments; corrective actions; and other property related reports as directed by the Contracting Officer.

(A) Loss, damage, destruction, or theft. Unless otherwise directed by the Property Administrator, the Contractor shall investigate and promptly furnish a written narrative of all incidents of loss, damage, destruction, or theft to the property administrator as soon as the facts become known or when requested by the Government.

(B) Such reports shall, at a minimum, contain the following information:

(1) Date of incident (if known).

(2) The name, commercial description, manufacturer, model number, and National Stock Number (if applicable).

(3) Quantity.

(4) Unique Item Identifier (if available).

(5) Accountable Contract number.

(6) A statement indicating current or future need.

(7) Acquisition cost, or if applicable, estimated scrap proceeds, estimated repair or replacement costs.

(8) All known interests in commingled property of which the Government property is a part.

(9) Cause and corrective action taken or to be taken to prevent recurrence.

(10) A statement that the Government will receive any reimbursement covering the loss, damage, destruction, or theft, in the event the Contractor was or will be reimbursed or compensated.

(11) Copies of all supporting documentation.

(12) Last known location.

(13) A statement that the property did or did not contain sensitive or hazardous material, and if so, that the appropriate agencies were notified.

(vii) Relief of stewardship responsibility. Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility for Government property when such property is--

(A) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator; or a Property Administrator granted relief of responsibility for loss, damage, destruction or theft of Government property;

(B) Delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or

(C) Disposed of in accordance with paragraphs (j) and (k) of this clause.

(viii) Utilizing Government property.

(A) The Contractor shall utilize, consume, move, and store Government Property only as authorized under this contract. The Contractor shall promptly

disclose and report Government property in its possession that is excess to contract performance.

(B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government property with property not owned by the Government.

(ix) Maintenance. The Contractor shall properly maintain Government property. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(x) Property closeout. The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss, damage, destruction, or theft cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

(2) The Contractor shall establish and maintain Government accounting source data, as may be required by this contract, particularly in the areas of recognition of acquisitions and dispositions of material and equipment.

(3) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. Significant findings and/or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

(g) Systems analysis.

(1) The Government shall have access to the contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be safeguarded from tampering or destruction.

(3) Should it be determined by the Government that the Contractor's property management practices are inadequate or not acceptable for the effective management and/or control of Government property under this contract, and/or present an undue risk to the Government, the Contractor shall immediately take all necessary corrective actions as directed by the Property Administrator.

(4) The Contractor shall ensure Government access to subcontractor premises, and all Government property located at subcontractor premises, for the purposes of reviewing, inspecting and evaluating the subcontractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(h) Contractor Liability for Government Property.

(1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, damage, destruction, or theft to the Government property furnished or acquired under this contract, except when any one of the following applies--

(i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.

(ii) The loss, damage, destruction, or theft is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel. Contractor's managerial personnel, in this clause, means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business; all or substantially all of the Contractor's operation at any one plant or separate location; or a separate and complete major industrial operation.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss, damage, destruction, or theft, due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or

present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss, damage, destruction, or theft of Government property occurred while the Contractor had adequate property management practices or the loss, damage, destruction, or theft of Government property did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft. The Contractor shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damage, destruction, or theft of Government property.

(4) Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

(i) Equitable adjustment. Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. The right to an equitable adjustment shall be the Contractor's exclusive remedy and the Government shall not be liable to suit for breach of contract for the following:

(1) Any delay in delivery of Government-furnished property.

(2) Delivery of Government-furnished property in a condition not suitable for its intended use.

(3) An increase, decrease, or substitution of Government-furnished property.

(4) Failure to repair or replace Government property for which the Government is responsible.

(j) Contractor inventory disposal. Except as otherwise provided for in this contract, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer.

(1) Scrap to which the Government has obtained title under paragraph (e) of this clause.

(i) Contractor with an approved scrap procedure.

(A) The Contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Contractor shall submit the scrap on an inventory disposal schedule.

(B) For scrap from other than production or testing the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures), except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that--

(1) Requires demilitarization;

(2) Is a classified item;

(3) Is generated from classified items;

(4) Contains hazardous materials or hazardous wastes;

(5) Contains precious metals; or

(6) Is dangerous to the public health, safety, or welfare.

(ii) Contractor without an approved scrap procedure. The Contractor shall submit an inventory disposal schedule for all scrap. The Contractor may not dispose of scrap resulting from production or testing under this contract without Government approval.

(2) Predisposal requirements.

(i) Once the Contractor determines that Contractor-acquired property is no longer needed for contract performance, the Contractor in the following order of priority--

(A) May contact the Contracting Officer if use of the property in the performance of other Government contracts is practical;

(B) May purchase the property at the acquisition cost; or

(C) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices).

(ii) The Contractor shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not used in the performance of other Government contracts under paragraph (j)(2)(i)(A) of this clause, property that was not purchased under paragraph (j)(2)(i)(B) of this clause, and property that could not be returned to a supplier under paragraph (j)(2)(i)(C) of this clause.

(3) Inventory disposal schedules.

(i) The Contractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify--

(A) Government-furnished property that is no longer required for performance of this contract, provided the terms of another Government contract do not require the Government to furnish that property for performance of this contract;

(B) Contractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract; and

(C) Termination inventory.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government.

(iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the Contractor shall prepare separate inventory disposal schedules for--

(A) Special test equipment with commercial components;

(B) Special test equipment without commercial components;

(C) Printing equipment;

(D) Information technology (e.g., computers, computer components, peripheral equipment, and related equipment);

(E) Precious metals;

(F) Nonnuclear hazardous materials or hazardous wastes; or

(G) Nuclear materials or nuclear wastes.

(iv) The Contractor shall describe the property in sufficient detail to permit an understanding of its intended use. Property with the same description, condition code, and reporting location may be grouped in a single line item.

(4) Submission requirements. The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than--

(i) 30-days following the Contractor's determination that a Government property item is no longer required for performance of this contract;

(ii) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(iii) 120 days, or such longer period as may be approved by the Termination Contracting Officer following contract termination in whole or in part.

(5) Corrections. The Plant Clearance Officer may--

(i) Reject a schedule for cause (e.g., contains errors, determined to be inaccurate); and

(ii) Require the Contractor to correct an inventory disposal schedule.

(6) Postsubmission adjustments. The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the inventory schedule.

#### **DOE-G-1005 OBSERVANCE OF LEGAL HOLIDAYS**

(a) The on-site Government personnel observe the following holidays:

New Year's Day

Martin Luther King, Jr.'s Birthday

President's Day

Memorial Day

Independence Day  
Labor Day  
Columbus Day  
Veterans Day  
Thanksgiving Day  
Christmas Day

Any other day designated by Federal statute, Executive order, or the President's proclamation.

(b) When any holiday falls on a Saturday, the preceding Friday is observed. When any holiday falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not by itself be cause for an additional period of performance or entitlement of compensation except as set forth within the contract.

(c) When DOE grants administrative leave to its Government employees (e.g., as a result of inclement weather, potentially hazardous conditions, or other special circumstances), Contractor personnel working on-site should also be dismissed. However, the contractor shall provide sufficient on-site personnel to perform round-the-clock requirements of critical work already in process, unless otherwise instructed by the Contracting Officer or authorized representative.

(d) Whenever administrative leave is granted to Contractor personnel pursuant to paragraph (c) of this clause, it shall be without loss to the Contractor. The impact of the excused delay may be submitted as a claim for adjustment to the fixed price of the contract and delivery schedule as appropriate.

(End of clause)

#### **DOE-G-1009 CONTRACTOR'S PROGRAM MANAGER**

(a) The contractor shall designate a Program Manager who will be the Contractor's authorized supervisor for technical and administrative performance of all work hereunder. The Program Manager shall provide the single point of contact between the Contractor and the Contracting Officer's Representative (COR) under this contract.

(b) The Program Manager shall receive and execute, on behalf of the Contractor, such technical directions as the COR may issue within the terms and conditions of the contract.

(End of clause)

#### **DOE-H-1010 SECTION 8(a) DIRECT AWARDS**

This contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to a Partnership Agreement between the Small Business Administration (SBA) and the Department of Energy (DOE). Although SBA is not identified in Section A (Standard Form 26), SBA remains the prime contractor for this contract. SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office for the 8(a) contractor is: U.S. Small Business Administration Sacramento District Office, 6501 Sylvan Rd, Citrus Heights, CA 95610.

DOE is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, DOE shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. DOE shall also coordinate with SBA prior to processing any novation agreement. DOE may assign contract administration functions to a contract administration office.

The contractor agrees:

(1) To notify the Contracting Officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives

the requirement for termination prior to the actual relinquishing of ownership or control.

- (2) To adhere to the requirements of 52.219-14, Limitations on Subcontracting.  
(End of Clause)

**DOE-H-1011 DEPARTMENT OF LABOR WAGE DETERMINATIONS**

In the performance of this contract the Contractor shall comply with the requirements of the U.S. Department of Labor Wage Determination(s) located in Section J, Attachment B and 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRE when applicable.

(End of clause)

**WES-G-1005 CONTRACTOR'S CONTRACT ADMINISTRATION (WAPA, FEB 2008)**

The name, title, phone number, office name, and complete mailing address of the Contractor's point of contact for contract administration, including defective or improper invoices, is as follows:

Name: _____	Title: _____
Phone Number: _____	E-mail address: _____
Fax Number: _____	Company Name: _____
Address: _____	City/State/Zip: _____

(End of Clause)

**WES-H-1014 REIMBURSEMENT FOR CONTRACTOR TRAVEL (WAPA, APR 2009)**

a. Costs incurred by contractor personnel for travel, lodging, other subsistence, and incidental expenses shall be considered to be reasonable and allowable if they do not exceed the current rates and amounts that are set for Government employees in the Federal Travel Regulation (FTR), which can be accessed at the following GSA Internet web site (URL):

[http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA\\_OVERVIEW&contentId=10359](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_OVERVIEW&contentId=10359)

b. The contractor will be reimbursed by the Government for travel and per diem expenses only when the travel is specifically authorized in advance by the Contracting Officer.

c. Reimbursement for travel costs shall be limited to the direct costs of travel and per diem expenses incurred by the contractor. The contractor must provide a certification that all travel expenses being reimbursed were paid to their employee and that the travel was at the direction of the Contracting Officer. Receipts for airfare, lodging, car rentals, and any incidental expenses must be submitted with the request for reimbursement."

(End of Clause)

**WES-H-1018 USE OF GOVERNMENT PROPERTY BY CONTRACTOR EMPLOYEES (WAPA, FEB 2008)**

a. The Government will provide the necessary facilities, equipment, and supplies required for the performance of this contract.

b. The Contractor is not authorized to furnish any equipment (including office equipment), furniture, fixtures, or other personal property items for use in the performance of this contract without prior, written approval from the Contracting Officer.

c. The Contractor shall follow all Government laws, regulations, and Western's local procedures regarding the care and use of Government property.

d. Government property shall be used for official Government business only.

e. The Contractor shall establish and enforce procedures to prevent loss or misuse of Government property by its employees. The contractor shall immediately notify the Government Property Manager if any supplied property is moved or transferred from its original location, or whenever any loss or damage occurs to the property.

f. Government property provided for the contractor's use may be inventoried at any time on an unannounced basis by authorized Government personnel.

g. The Contractor may be held liable for misuse, damage or loss of Government property caused by contractor employees and may be required to reimburse the Government for such loss or damage.

h. Upon completion of the contract, the Government may require an inventory of all property furnished for the contractor's use to verify that all items are still on site and in working condition.

(End of Clause)

**WES-H-1020 REQUIREMENTS FOR ELECTRONIC SUBMISSION OF PROPOSALS (WAPA, FEB 2008)**

The following requirements apply to proposals and/or other documents submitted electronically via the Department of Energy's (DOE) Industry Interactive Procurement System (IIPS) or by other electronic means. The DOE IIPS may be accessed via the "DOE e-Center" web page.

a. The terms and conditions contained in the Notice of Disclaimer on the IIPS are hereby incorporated into this solicitation.

b. Required file formats: All electronic files must be submitted in one or more of the following Microsoft Office for Windows (Office 2003 or earlier formats) compatible file formats .doc, .xls, .mdb, .ppt; portable document format (.pdf); or graphic file formats .gif or .jpg. Use whichever format is most appropriate for the type of document involved. Engineering drawings, if any, must be in AutoCAD, .pdf, or in one of the acceptable graphic file formats. NOTE: If there are an inordinately large number of drawings, or if the file sizes are prohibitively large for efficient electronic transmission, contact the Contracting Officer before the proposal due date for further instructions.

c. Offerors are responsible for ensuring their electronically submitted files are free from viruses and are in a prescribed, readable file format. Any file containing a detectable virus will be rejected and considered non-responsive. To avoid making unintentional changes to an offeror's proposal, Western will not translate files submitted in incorrect file formats.

d. For purposes of determining the timeliness of proposal submissions, the date/time stamp (DTS) assigned by IIPS will be used unless otherwise specified in the solicitation.

e. Electronic signatures. Submission of proposals via IIPS will constitute signed copies of the required documents. The name of the authorized, responsible company official who would normally sign the document shall be entered on the signature line. In addition, the Contracting Officer may require, at his or her discretion, a signed, paper copy of each original signature page to be submitted via US Mail or by facsimile.

f. Updates or changes to proposals or other documents originally submitted via IIPS must also be submitted via IIPS. If a conflict or discrepancy is discovered between a paper copy of a contract document, the file posted on IIPS shall be considered the official controlling version of the document.

g. Offerors must use discrete file names and descriptions for all files uploaded to IIPS.

h. Offerors shall not make changes to Government-originated files/documents (other than for signatures or fill-ins) that must be returned to the Government. Direct questions or concerns about any Government-originated documents to the Contracting Officer.

(End of Provision)

**WES-H-1024 LOBBYING RESTRICTION (WAPA, DEC 2009)**

The contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence Congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

(End of Clause)

**WES-H-1025 PREFERENCE FOR PURCHASING AMERICAN-MADE EQUIPMENT AND PRODUCTS (WAPA, FEB 2008)**

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

(End of Clause)

**WES-H-1026 USE OF GOVERNMENT VEHICLES BY CONTRACT EMPLOYEES (WAPA, FEB 2008)**

a. The Government will furnish vehicles for the performance of work required by the contract if vehicles are available and when the Contracting Officer (CO) or his or her authorized representative determines it is in the Government's interest to do so.

b. Before contractor employees are authorized to use Government furnished vehicles:

(1) Contractor employees must have a valid State driver's license and have CO or Contracting Officer's Representative (COR) approval prior to operating a Government vehicle.

(2) The contractor shall ensure that employees who operate Government furnished vehicles comply with all State laws relating to motor vehicle operation.

(3) The contractor shall ensure that employees are aware of all Federal regulations and Western's procedures regarding the use of Government vehicles, and that each employee complies with those regulations and procedures.

c. Government vehicles shall not be used for any personal use whatsoever.

(End of Clause)

**WES-H-1030 SOFTWARE MADE AVAILABLE FOR A CONTRACTOR'S USE (WAPA, FEB 2008)**

a. The Government may provide software acquired under license available to the contractor for its use in the performance of this contract.

b. The contractor recognizes and acknowledges that software provided by the Government (and/or data contained therein) may be proprietary in nature, and agrees to take all reasonable precautions to avoiding using the software in violation of the prescribed license.

c. The contractor agrees that its employees will not use, copy, disclose, modify, or reverse engineer software provided by the Government except as permitted by the license and any other terms and conditions under which the software is made available to the contractor.

d. The contractor shall not violate any software licensing agreement, or cause the Government to violate any licensing agreement. If, at any time during the performance of this contract, the contractor has reason to believe that its utilization of Government furnished software may involve or result in a violation of the software licensing agreement, the contractor shall promptly notify the Contracting Officer, in writing, of the pertinent facts and circumstances. Pending direction from the Contracting Officer, the contractor shall continue to perform work to the full extent possible without utilizing the software.

e. The contractor agrees to include paragraphs (a) through (d) of this clause in all subcontracts issued in connection with the performance of work under this contract.

(End of Clause)

**WES-H-1031 INDEMNITY (WAPA, FEB 2008)**

The contractor shall hold harmless and indemnify the United States and its officers, representatives, and employees, from all claims, losses, damages, actions, causes of action, expenses, and/or liability resulting from, brought for, or on account of, any loss, personal injury, death, or property damage, including but not limited to incidents related to the transportation, removal, disposal, and/or accidental discharge of toxic and/or hazardous waste or material, received or sustained by any person or persons, including but not limited to the contractor, the United States, or third parties, and any of their employees, agents, officers, or representatives, to the extent caused by, growing out of, resulting from, incident to, or connected with, the contractor's negligent performance under this contract.

(End of Clause)



**WES-H-1032 REQUIRED INSURANCE (WAPA, FEB 2008)**

a. The contractor shall procure and maintain during the entire period of his performance under this contract the following minimum insurance:

(1) Workman's Compensation Insurance in accordance with the laws of the state where contract performance occurs; Occupational Disease Coverage; and Employees Liability Coverage.

(2) Comprehensive General and Automobile Liability Insurance with the following minimum coverages:

(i) GENERAL LIABILITY

(A) Bodily Injury \$1,000,000.00 per occurrence.

(B) Property Damage \$1,000,000.00 each accident; \$ 1,000,000.00 in the aggregate.

(ii) AUTOMOBILE INSURANCE

(A) Bodily Injury, \$200,000.00 per person;  
\$500,000.00 per occurrence.

(B) Property Damage, per occurrence: \$20,000.00.

b. These policies shall have appropriate language waiving all subrogation rights against the Government, unless otherwise approved by the Contracting Officer.

c. Prior to the commencement of work under this contract, the contractor shall furnish a copy of the insurance certificate (binder) or other objective evidence of the above-required insurance to the Contracting Officer. The policies shall contain an endorsement to the effect that cancellation or any material change in the insurance policies that adversely affect the interests of the Government in such insurance shall not be effective for such period as may be prescribed by the laws of the State in which this contract is to be performed, and in no event less than thirty (30) days after written notification is provided to the Contracting Officer.

d. The contractor agrees to insert the substance of this clause, including this paragraph (d), into any subcontracts issued under this contract.

(End of Clause)

**WES-H-1043 FOREIGN VISITORS AND CONTRACT EMPLOYEES (WAPA, MAY 2005)**

The Contractor must receive prior, written approval from the appropriate Western Security Manager (WSM) before any non-U.S. Citizens (Foreign Nationals) visit or work at any Western Area Power Administration (Western) facility. The Contractor must certify in writing that:

1) each of their employees working under this contract that may visit or be assigned to work at any Western facility is a U.S. Citizen, or;

2) the Contractor shall provide an accurately completed Foreign National Data Card, WAPA Form 3000-72, Attachment C for each of their Foreign National employees that may visit or work at any Western facility. The Contractor shall forward the completed Form to the COR at least 45 days in advance of each Foreign National employee's visit or their beginning of work. Foreign National employees shall not be allowed on-site at any Western facility without prior approval of the cognizant WSM. Circumstances which do not allow a 45 day notification require prior, written approval of the cognizant WSM. The Contractor shall include this requirement in any subcontract it issues under this contract. Western reserves the right to remove any contract employee from Western's property pending the conclusion of the Foreign National background check.

(End of clause)

**WES-H-1044 SECURITY PROCESSING FOR SERVICE CONTRACTOR AND SUBCONTRACTOR PERSONNEL WORKING ON A WESTERN AREA POWER ADMINISTRATION SITE (WAPA, MAY 2008)**

A. Background Investigation Requirements. To be eligible to work under a Service Contract at a Western site (on-site), all employees (contract and subcontract) expected to work for a period of 180 days or more must undergo a full background investigation. Western will submit all background investigations to the Office of Personnel Management (OPM). The Contracting Officer (CO), Contracting Officers Representative (COR), and appropriate Western Security Manager (WSM) at their discretion may require a National Crime Information

Center (NCIC) Special Agreement Check (SAC) on contract and subcontract employees expected to work on-site for a period of less than 180 days, based on the sensitivity of the work to be performed; the sensitivity of the facility upon or in which the work is to be performed; and whether the work is performed during or outside of normal work hours. There are no submittal requirements; however, contract employees must provide their name, date of birth, place of birth, social security number and any other names used (and dates when used). A SAC may also be requested at the discretion of the CO, COR, and appropriate WSM on Service Contractors to check criminal histories while waiting for the results of the OPM background check. The CO or the COR will recommend to the WSM the level of security check or investigation to be conducted based on the sensitivity of the work to be performed; the sensitivity of the facility upon or in which the work is to be performed; and whether the work is performed during or outside of normal work hours.

This requirement includes both U.S. and Non U.S. Citizens. Contractors who are Foreign Nationals (Non U.S. Citizens) must submit additional paperwork to verify citizenship/identity. Requirements are outlined in Section C, Additional Submittal Requirements for Foreign Nationals (Non U.S. Citizens). Also see the Foreign

National-Non U.S. Citizen clause. The Government will pay all costs to conduct security checks and investigations.

B. Submittal Requirements:

(1) Low Risk Positions. Low risk positions may include those where employees have limited access to business sensitive information on an occasional basis, such as personnel information; limited access to databases and systems; financial information/records; and privacy information, or with limited access to non-critical facilities during and outside normal working hours. These positions have the potential for limited impact on the integrity and efficiency of the agency.

a. Investigation Requirements: Employees in designated low risk positions expected to work on-site are required to undergo a National Agency Check and Inquiries (NACI) investigation. The scope of the investigation includes the following:

- 1) Employment/Self-employment/Unemployment Coverage (5 year Inquiry);
- 2) Education (5 years highest degree-Inquiry);
- 3) Residence (3 years-Inquiry);
- 4) Reference Contacts (Inquiry);
- 5) Law Enforcement Checks (5 years-Inquiry); and
- 6) National Agency Checks to include, access to previous Federal investigations of OPM's Security/Suitability Investigations Index (SII); Defense Clearance and Investigations Index (DCII); FBI name check; FBI National Criminal History Fingerprint Check; Credit Search of National Credit Bureaus, Military Personnel Record Search; and Citizenship Verification.

b. Forms Requirement: The CO or COR will provide the forms indicated below to the contractor for completion by all employees (including subcontract employees) in low risk positions expected to work under this contract.

-Standard Form (SF) 85

-Two (2) FD-258 Fingerprint Cards

-OF 306 Declaration for Federal Employment (this form is used for contractors to cover questions that are not addressed on the SF-85)

(2) Moderate Risk Positions. Moderate risk positions may include those where employees have access to business sensitive information on a regular basis, such as: detailed personnel information; administrative access to databases and systems; operational information; financial information and records, and privacy information, or with access to non-critical facilities during and outside normal working hours.

a. Investigation Requirements: Employees in designated moderate risk positions expected to work on-site are required to undergo a Minimum Background Investigation (MBI). The scope of the investigation includes the following:

- 1) Personal Subject Interview;
- 2) Employment/Self-employment/Unemployment Coverage (5 years- Inquiry);
- 3) Education (5 years, Highest Degree-Inquiry);
- 4) Residence (3 years-Inquiry);

5) Reference Contacts (Inquiry);  
6) Law Enforcement Checks (5 years-Inquiry and/or Record); and  
7) National Agency Checks to include access to previous Federal investigations of OPM's Security/Suitability Investigations Index (SII); Defense Clearance and Investigations Index (DCII); FBI name check; FBI National Criminal History Fingerprint Check; Credit Search of National Credit Bureaus, Military Personnel Record Search; and Citizenship Verification.

b. Form Requirements: The CO or COR will provide the forms indicated below to the contractor for completion by all employees (including subcontract employees) in moderate risk positions expected to work under this contract.

-Standard Form (SF) 85P

-Two (2) FD-258 Fingerprint Cards

(3) High Risk Positions. High Risk Positions include those where employees have access and control of business sensitive information on a daily basis, such as: detailed financial records/systems, budget information, accounting information, legal information, detailed personnel information, administrative access to databases, systems and networks; operational information; and privacy information, or with access to critical facilities during and outside normal working hours.

a. Investigation Requirements:

Employees in designated high risk position expected to work on-site are required to undergo a Background Investigation (BI). The scope of the investigation includes the following:

- 1) Personal Subject Interview;
- 2) Employment/Self-employment/Unemployment coverage (5 years);
- 3) Education (2 years/verification of degree);
- 4) Residence (3 years);
- 5) Reference Contacts;
- 6) Law Enforcement Checks (5 years); and
- 7) National Agency Checks to include access to previous Federal investigations of OPM's Security/Suitability Investigations Index (SII); Defense Clearance and Investigations Index (DCII); FBI name check; FBI National Criminal History Fingerprint Check; Credit Search of National Credit Bureaus, Military Personnel Record Search; and Citizenship Verification.

b. Form Requirements:

-Standard Form (SF) 85P

-Two (2) FD-258 Fingerprint Cards

C. Additional Submittal Requirements for Foreign Nationals (Non U.S. Citizens). Also see the Foreign National-Non U.S. Citizen clause. All Foreign Nationals (Non U.S. Citizens) regardless of the amount of time they will be visiting or working at a Western facility must be entered into the Foreign Access Central Tracking System (FACTS). FACTS is the official DOE system for monitoring, tracking and approving all foreign visits and assignments to DOE facilities.

Form Requirements: The CO or COR must submit a completed WAPA Form 3000.72, Foreign National Data Card. The form requests the following information:

1. Personal information including date of birth, place of birth, place of employment, and permanent address.
2. Passport, Visa, and Immigration and Customs Enforcement information.
3. Detailed explanation of the purpose for the visit or assignment. The WSM will advise the CO and/or the COR of the approval or denial of the Foreign Nationals request to visit or work at a Western facility.

D. Processing Background Investigations. The Contractor must have employees selected to work at Western facilities (contract and subcontract) complete the applicable forms within ten (10) working days after offer and acceptance of employment. The Contractor will submit the completed forms to the CO, COR or appropriate WSM who will forward to OPM. Upon completion of the background investigation, OPM will submit the completed investigation to Western Security Officer for adjudication. The Security Officer will review the investigation and inform the CO or COR if the proposed employee has successfully/unsuccesfully passed the investigation. Security checks and investigations are required no less than every five (5) years for high risk positions and no less than every ten (10) years for low-to-moderate risk positions, or at any point in time the applicable CO, COR, or

WSM may request another investigation. Probationary employment may commence prior to completion of the security checks or investigations, however, continued employment will be subject to receipt of approved security reports, or if disapproved, subject to the discretion of the appropriate CO or WSM.

E. Notification of Disqualifying Information: If the results of the background investigation contain derogatory information, the WSM in conjunction with the CO will determine the best course of action. Individuals may be barred from working on a Western site for any of the following reasons:

1. Conviction of a felony or a crime of violence or of a misdemeanor involving moral turpitude.
2. Falsification of information entered on security forms or of other documents submitted in relation to employment at a Western site.
3. Improper conduct once performing on the contract, including criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government regardless of whether the conduct directly related to the contract.
4. Any behavior judged to pose a potential threat to Western personnel or property.

F. General Information:

1. Under no circumstances shall the background investigation be released to a non-authorized individual or entity. When the background investigation documents are no longer required by the CO, COR, or WSM, it shall be destroyed by shredding.

2. Failure of the contractor to comply with the requirements set forth in this clause may result in termination of this contract.

G. In accordance with standards established by the North American Electric Reliability Corporation (NERC), Critical Infrastructure Protection (CIP)-004-1, as it pertains specifically to cyber security, Western Area Power Administration (Western) requires all contractor (and subcontractor) personnel having authorized unescorted physical access to Critical Cyber Assets to undergo identity verification and law enforcement and/or national agency checks, as appropriate, every 7 years after completion of the initial background investigation.

(End of Clause)

#### **WES-H-1045 ACCESS TO DOE OWNED OR LEASED FACILITIES (WAPA, NOV 2005)**

(a) The performance of this contract requires that employees of the Contractor have physical access to DOE owned or leased facilities. The Contractor understands and agrees that DOE has a prescribed process with which the Contractor and its employees must comply in order to receive a security badge that allows such physical access. This process includes, but is not limited to an FBI fingerprint check and other background checks and investigations as required by DOE. The Contractor further understands that it must propose employees whose background offers the best prospect of obtaining a security badge approval for access, considering the following criteria, which are not all inclusive and may vary depending on access requirements:

- (1) is, or is suspected of being, a terrorist;
- (2) is the subject of an outstanding warrant;
- (3) has deliberately omitted, concealed, or falsified relevant and material facts from any Questionnaire for National Security Positions (SF-86), Questionnaire for Non-Sensitive Positions (SF-85), or similar form;
- (4) has presented false or forged identity source documents;
- (5) has been barred from Federal employment;
- (6) is currently awaiting a hearing or trial or has been convicted of a crime punishable by imprisonment of six (6) months or longer; or
- (7) is awaiting or serving a form of pre-prosecution probation, suspended or deferred sentencing, probation or parole in conjunction with an arrest or criminal charges against the individual for a crime that is punishable by imprisonment of six (6) months or longer.

(b) The Contractor shall assure:

(1) In initiating the process for gaining physical access, (i) compliance with procedures established by DOE in providing its employee(s) with any forms

directed by DOE, (ii) that the employee properly completes any forms, and (iii) that the employee(s) submits the forms to the person designated by the Contracting Officer.

(2) In completing the process for gaining physical access, that its employee (i) cooperates with DOE officials responsible for granting access to DOE owned or leased facilities and (ii) provides additional information, requested by those DOE officials.

(c) The Contractor understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective for that employee unless DOE subsequently determines that access may be granted. Upon notice from DOE that an employee's application for a security badge is or will be denied, the Contractor shall promptly identify and submit the forms referred to in subparagraph (b)(1) of this clause for the substitute employee. The denial of a security badge to individual employees by DOE shall not be cause for extension of the period of performance of this Contract or any contractor claim against DOE.

(d) The Contractor shall return to the Contracting Officer or designee the badge(s) or other credential(s) provided by DOE pursuant to this clause, granting physical access to DOE owned or leased facilities by the Contractor's employee(s), upon:

(1) the termination of this Contract;

(2) the expiration of this Contract;

(3) the termination of employment on this Contract by an individual employee;

or

(4) demand by DOE for return of the badge.

(e) The Contractor shall include this clause, including this paragraph (e), in any subcontract, awarded in the performance of this Contract, in which an employee(s) of the subcontractor will require physical access to DOE owned or leased facilities.

(End of Clause)

#### **WES-H-1049 SAFETY AND HEALTH - MODERATE RISK (WAPA, MAY 2005)**

In performing the work required by this contract, the Contractor shall comply with all applicable Federal, State, or local safety, health, or industrial safety codes including the latest effective standards promulgated by the Department of Labor, Occupational Safety and Health Administration; Safety and Health Standards 29 CFR 1910, 29 CFR 1925; and the Construction Safety and Health regulations promulgated under Section 107 of the Contract Work Hours and Safety Standards Act, 29 CFR 1926. If there is a conflict between the requirements of the applicable Federal, State, or local safety, health, or industrial safety codes, the more stringent requirements shall prevail. For any cranes used in the performance of this contract, a copy of the crane inspection records shall be furnished to Western's on-site representative prior to the performance of work. The United States is liable only for negligence on the part of its employees in accordance with the Federal Tort Claims Act, as amended. Prior to starting work, an on-site safety meeting shall be held with Western's representative to address and discuss safety procedures related to the work required.

(End of Clause)

#### **WES-H-1055 EMPLOYEE CLEARANCE PROCEDURES (WAPA, FEB 2008)**

a. Within 30 days after contract award, the Contractor shall establish employee clearance procedures that are applicable to all contractor employees working under this contract to ensure that all Government property, keys, identification badges, and other similar items are recovered whenever an employee resigns or otherwise leaves employment under this Contract. These clearance procedures must be approved by the Contracting Officer or the Contracting Officer's Representative (COR), if one has been appointed.

b. A clearance form similar to WAPA Form 3000.56b shall be used to document completion of all clearance actions and shall be made available for the CO/COR's review upon his or her request.

(End of Clause)

**WES-H-1056 CONFIDENTIALITY OF INFORMATION (WAPA, JUL 2009)**

a. Performance of work under this contract may result in the Contractor having access to confidential information via written or electronic documents or by virtue of having access to Western's electronic business systems. This confidential information may include some or all of the following information: personally identifiable information (such as social security account numbers), and/or proprietary business, technical, or financial information belonging to the Government or other companies or organizations doing business with the Government. The Contractor shall treat this information as confidential and agrees not to use this information for its own purposes or to disclose the information to third parties unless specifically authorized to do so in writing by the Contracting Officer.

b. The foregoing restrictions, however, do not apply to:

(1) Information which, at the time of receipt by the Contractor, is in the public domain;

(2) Information which subsequently becomes part of the public domain through no fault or action of the Contractor;

(3) Information which the Contractor can demonstrate was previously in its possession and was not acquired directly or indirectly as a result of access obtained for performing work under this contract;

(4) Information which the Contractor can demonstrate was received from a third party who did not require the Contractor to hold it in confidence.

(5) Information which is subject to release under applicable law.

c. The Contractor shall obtain a written agreement from each of its employees who are granted access to confidential data that the employee agrees that he or she will not discuss, divulge, or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract. The agreement shall be in a form satisfactory to the Contracting Officer.

d. Upon request of the Contracting Officer, the Contractor agrees to execute an agreement that includes all material aspects of this clause, subject to the approval of the Contracting Officer, with any party whose facilities or proprietary data it is given access to that restrict use and disclosure of the data or information obtained in those the facilities. A copy of the agreement shall be provided to the Contracting Officer.

e. Upon request of the Contracting Officer, the Contractor shall supply the Government with reports itemizing the confidential or proprietary information it receives under this contract and identify the source (company or companies) of the information.

f. The contractor agrees to flow down this clause to all subcontracts under this contract.

(End of Clause)

**WES-H-1057 CONTRACTOR EMPLOYEE CONFLICT OF INTEREST AND NONDISCLOSURE AGREEMENTS (WAPA, FEB 2008)**

The Contractor is required to obtain the following "Nondisclosure and Employee Conflict of Interest" statements from all support service personnel employed under this effort.

"NONDISCLOSURE AND EMPLOYEE CONFLICT OF INTEREST"

NON-DISCLOSURE: I, (employee's name), hereby agree as a condition of employment, and in certain cases under penalty of law, that I will not, unless authorized, disclose to the public or any unauthorized government employees, any oral or written information which was obtained in the performance of this contract with the U.S. Department of Energy. This agreement applies to classified and unclassified information and materials relating to all aspects of contractual performance.

CONFLICT OF INTEREST: I, (employee's name), hereby agree as a condition of employment, to report to my immediate supervisor any actual or apparent conflict of interest during my term of employment with regards to contractual support for the U.S. Department of Energy. This reporting applies to financial or employment interests in subcontractors, or potential subcontractors to the prime

support contract, employment or financial relationships with prime or subcontractors doing business with the Western Area Power Administration of the U.S. Department of Energy, or any present or future personal or business relationships with government employees who are employed within the Western Area Power Administration or other DOE activity. This information will be supplied to the Western Contracting Officer or his contract representative upon request or upon the identification of an actual or apparent conflict of interest. The disclosures will be made on a continuing basis and reaffirmed in writing at least annually.

(End of Clause)

**WES-H-1060 GREEN PURCHASING UNDER DOE SERVICE CONTRACTS (WAPA, JUL 2009)**

Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, the Department of Energy is committed to managing its facilities in a manner that will promote the natural environment and protect the health and well being of Federal employees and contractor service providers. In the performance of work under this contract, the Contractor shall exert its best efforts to provide its services in a manner that will promote the natural environment and protect the health and well being of Federal employees, contract service providers and visitors using the facility. Green purchasing or environmentally preferable contracting includes the initiatives described below:

Alternative Fuels and Vehicles are described at <http://www.afdc.energy.gov/afdc/> Biobased Products are described at <http://www.biopreferred.gov/> Energy efficient products are described at <http://energystar.gov/products> for Energy Star products and at <http://www.eere.energy.gov/femp/procurement> for FEMP designated products. Environmentally Preferable Computers are described at <http://www.epeat.net> Non-Ozone Depleting Products are described at <http://www.epa.gov/Ozone/snap/index.html>. Recycled Products are described at <http://epa.gov/cpg> Water efficient products are described at <http://epa.gov/watersense/>.

To the extent that the services provided by the Contractor require the provision of any of the above types of products, the environmentally preferable type of product is to be furnished unless that type of product is not available competitively within a reasonable time, at a reasonable price, is not life cycle cost efficient in the case of energy consuming products, or does not meet reasonable performance standards. The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, in Section I require the use of products that have biobased content, are energy efficient, or have recycled content.

(End of Clause)

**WES-J-1001 LIST OF ATTACHMENTS - GENERAL (WAPA, FEB 2008)**

The following list of attachments included in this solicitation will become part of the resulting contract award:

Attachment A: Performance Work Statement Dated Feb 2010

Attachment B: DOL Wage Determination 2005-2055, Rev 10 Dated 05/26/2009

Attachment C: Foreign National Data Card

Attachment D: Past Performance Questionnaire

(End of Clause)

## 52.212-1 INSTRUCTIONS TO OFFERORS--COMMERCIAL ITEMS (JUN 2008)

(a) "North American Industry Classification System (NAICS) code and small business size standard." The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) "Submission of offers." Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show--

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Price and any discount terms;
- (7) "Remit to" address, if different than mailing address;
- (8) A completed copy of the representations and certifications at FAR 52.212-3 (see FAR 52.212-3(b) for those representations and certifications that the offeror shall complete electronically);
- (9) Acknowledgment of Solicitation Amendments;
- (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
- (11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) "Period for acceptance of offers." The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) "Product samples." When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(e) "Multiple offers." Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) "Late submissions, modifications, revisions, and withdrawals of offers."

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)

(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and--



(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(g) "Contract award (not applicable to Invitation for Bids)." The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) "Multiple awards." The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) "Availability of requirements documents cited in the solicitation."

(1)

(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to--

GSA Federal Supply Service Specifications Section  
Suite 8100  
470 East L'Enfant Plaza, SW  
Washington, DC 20407  
Telephone (202) 619-8925  
Facsimile (202) 619-8978.

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the

addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

(2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites:

- (i) ASSIST (<http://assist.daps.dla.mil>).
- (ii) Quick Search (<http://assist.daps.dla.mil/quicksearch>).
- (iii) ASSISTdocs.com (<http://assistdocs.com>).

(3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by--

- (i) Using the ASSIST Shopping Wizard (<http://assist.daps.dla.mil/wizard>);
- (ii) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or
- (iii) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

(4) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) "Data Universal Numbering System (DUNS) Number." (Applies to all offers exceeding \$3,000, and offers of \$3,000 or less if the solicitation requires the Contractor to be registered in the Central Contractor Registration (CCR) database. The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS or DUNS+4 number that identifies the offeror's name and address. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR Subpart 32.11) for the same concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. An offeror within the United States may contact Dun and Bradstreet by calling 1-866-705-5711 or via the internet at <http://fedgov.dnb.com/webform>. An offeror located outside the United States must contact the local Dun and Bradstreet office for a DUNS number. The offeror should indicate that it is an offeror for a Government contract when contacting the local Dun and Bradstreet office.

(k) "Central Contractor Registration." Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror. Offerors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

(l) "Debriefing." If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(4) A summary of the rationale for award;

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of Provision)

(c) Offeror shall make pricing and terms valid for a minimum of 120 days from the solicitation closing date appearing in box 8 of the SF 1449.

(m) The information listed below shall be included in each proposal:

(1) Two originally signed and completed SF 1449 Forms, including acknowledgement of any amendments received. The acknowledgement of amendments may be accomplished by signing the front page of each amendment (SF30) and including the amendment's front page in this Section. The amendments may also be acknowledged by a signed statement identifying each amendment by number and agreeing they were included in the preparation of the proposal.

(2) Once copy of Schedule of Supplies/Services, completed with the prices proposed for the corresponding line items as appropriate.

(3) One copy of spreadsheets for the following: 1) pricing of the base period and each option by labor category, number of hours proposed for each labor category, labor overhead calculations, loaded overtime rates; 2) breakdown of General and Administrative indirect costs; and 3) profit rate. The figures represented on these spreadsheets should equal the total price for each period of performance on Schedule B.

(4) One completed copy of Provision 52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS--COMMERCIAL ITEMS (AUG 2009).

(5) Five (5) copies of the offeror's exception(s) to any terms, conditions, or requirements of the intended contract as presented in the solicitation. Include the exception taken and the offeror's proposed resolution. If there are no exceptions taken, include a signed statement to that effect.

(6) Offerors shall provide an original and five (5) copies addressing the offeror's Corporate and Management Experience (and any proposed subcontractors) illustrating how the offeror will efficiently and effectively perform this contract. This information shall include but not be limited to: the type of customer (ex Federal, State, Private), duration of performance, dollar value, scope/type of support provided, type of pricing arrangement (ex Fixed Price, Cost, Time and Materials/Labor Hour). In addition, offerors shall specifically address their management ability. This shall include, but not be limited to: their capability to manage labor resources, effectively control and report price and performance and resolve problems; effectively respond to fluctuations in workload, manage separate and overlapping tasks, and add and reduce manpower when required. Each copy shall not exceed ten (10) 8 1/2" x 11" pages of double spaced, 12 font text.

(7) Offerors shall provide five (5) copies of documentation addressing their Management Approach for this project. This documentation shall include, but not be limited to: organizational structure management plan and quality assurance plan (QAP) to accomplish the performance work statement; an adequate organization, which can coordinate team efforts, and assert effective management and price control and supervision of personnel (including subcontractors, if applicable) to ensure timeliness and accuracy of work accomplished/deliverables/reports for all labor categories involved; key personnel (Project Manager) resume with letter of commitment; proposed approach to staffing this project describing the offeror's (and subcontractor's, if any) compensation package, its competitiveness within the local commercial marketplace(s) and its ability to capture and retain incumbent contract staff and recruit new staff when necessary (compensation package includes, but is not limited to salary, health and insurance benefits, leave policies, cross training, retirement, and other benefits as well as awards and recognition policies); plans and commitment to provide replacement or additional staff when necessary throughout the life of the contract. Each copy of narrative text shall not exceed five (5) 8 1/2" x 11" pages of double spaced, 12 font text.

There is no page limitation for examples of existing QAPs or compensation packages.

(8) Offerors shall provide five (5) copies of a Phase-In plan that shall, at a minimum, address: contractor (and subcontractor, as applicable) responsibilities for phase-in activities, including interaction with the incumbent Contractor and the Government, key issues and milestones; policies and procedures regarding employment of incumbent contract employees and other employees that may need to be hired - to include, but not be limited to, assessment of qualifications/skills; and if necessary, approaches for dealing with contingencies which may arise during the phase-in that may prevent an orderly and efficient transition. Each copy shall not exceed five (5) 8 1/2" x 11" pages of double spaced, 12 font text.

(9) Offerors shall submit past performance references for at least three (3), but no more than five (5) specifically related contracts/work efforts that are very relevant, active within the past three (3) years, and which demonstrate the ability of its current organization to perform the proposed effort. Very relevant past/present performance is defined as having experience with performance based, Administrative Support Services performed within the last three years. Contracts should be similar in size, scope and complexity as the work described in this RFP, and may include contracts with the federal government, state and local government agencies, and commercial customers. Offerors shall send the Past Performance questionnaires attached to this RFP to their past performance references. The questionnaire recipient will email or fax the completed questionnaire **DIRECTLY** to the **CONTRACTING POINT OF CONTACT** listed in **paragraph D** of this questionnaire **NO LATER THAN THE STATED CLOSING DATE OF THE RFP**.

Questions submitted after March 1, 2010 may or may not be answered by the Government.

## **52.212-2 EVALUATION--COMMERCIAL ITEMS (JAN 1999)**

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

(a.1) The Government intends to award one contract to the responsive, responsible offeror that it considers to provide the best value to the Government for Administrative Support Services. Technical factors are more important than past performance; technical factors and past performance are more important than price.

On or before the RFP closing/response date, offerors shall submit required representations and certifications, price proposals, past performance references, and written technical information. Proposal submittals will be screened to ensure they are complete, in accordance with Provision 52.212-1 *Instructions to Offerors-Commercial Items* of the solicitation, timely, and from a qualified 8(a) firm. A proposal may be eliminated from further consideration before a detailed evaluation is performed if the proposal is considered so grossly and obviously deficient as to be totally unacceptable on its face, or whose prices are so inordinately high or unrealistically low. For example, a proposal will be deemed unacceptable if it does not represent a reasonable initial effort to address itself to the essential requirements of the solicitation, or if it clearly demonstrates that the offeror does not understand the requirements of the solicitation. In the event a proposal is rejected, a notice will be sent to the offeror stating the reason(s) the proposal will not be considered for further evaluation. Late proposals will be treated in accordance with Solicitation Provision 52.212-1(f).

The evaluation order of proposals will be determined by a random selection.

Each offer will be assessed in three areas: Technical (which includes Corporate and Management Experience, Management Approach, and Phase-in Plan), Past Performance, and Price.

For the **Technical Area**, proposals will be evaluated based on the following criteria listed below. These are listed in their relative order of importance. For purposes of this evaluation, "Offeror" is defined as a single contractor or a contractor and any proposed subcontractor(s), as applicable.

**Criterion 1 - CORPORATE AND MANAGEMENT EXPERIENCE**

Corporate and Management experience will be evaluated in terms of the offeror's (and any proposed subcontractors) demonstrated experience on projects that are similar in size and scope, with an emphasis on the administrative support services required by this acquisition, and how those experiences have prepared the offeror to efficiently and effectively perform this contract. Higher ratings will be assigned to offerors that have the most experience performing, under similar contract terms and conditions, the full range of performance based, administrative support services required by this acquisition.

**Criterion 2 - MANAGEMENT APPROACH**

The offeror will be evaluated on the efficiency, effectiveness and soundness of the management approach with particular attention given to the offeror's (and subcontractor's, if any) key personnel resume (Project Manager) and commitment letter which meet and/or exceed the qualifications at Appendix B and the offeror's compensation package. The approach will be evaluated in terms of the ability to integrate and provide the various functions required by the contract, and the ability to deal with any problems and assure overall control of the contract effort. The Government will evaluate the on-site program manager's responsibility and authority; the process to be followed by the program manager in obtaining decisions beyond their authority; the type and degree of corporate resources that will support the program manager; the proposed line of communications between the organizational elements; and interface with Government personnel. Where subcontractors are to perform work, the lines of communication as well as reporting relationships between and among the prime contractor and subcontractor will be evaluated. The use of subcontractors will be evaluated in terms of functionality in meeting the requirements of this project and the benefits and risks of these arrangements to the Government. The offeror's quality control policies, standards and procedures, and techniques to be used as a self-evaluation process to assure the Government of acceptable quality levels of service will be evaluated for soundness of approach. Offeror's compensation packages will be evaluated in terms of its competitiveness within the local commercial marketplace and its ability to capture and retain incumbent contract staff and recruit new staff when necessary. Higher ratings will be given to offerors who demonstrate a sound and efficient management approach, possess a compensation package that supports retention of incumbent contract staff and the ability to recruit additional qualified staff when necessary, and who are committed to customer service and process improvements. Higher ratings will also be assigned to offerors with proposed subcontractors that offer essentially the same compensation packages. Lowered compensation packages for essentially the same professional work will be evaluated on the basis of maintaining program continuity, uninterrupted high quality work and availability of competent employees, and may indicate lack of sound management judgment and understanding of the requirement.

### **Criterion 3 - PHASE-IN PLAN**

The offeror's Phase-in Plan for the initiation of the project will be evaluated for completeness and level of detail that demonstrates the offeror's ability to become fully operational, assume complete responsibility of the contract, and to assure an orderly and efficient transition. Higher ratings will be given to offerors whose phase-in plans minimizes impacts on continuity of operations, includes the evaluation/assessment process of existing staff, and adequately addresses and deals with contingencies that may arise.

For **Past Performance**, the Government will collect and evaluate the information provided by references directly to the Contracting Office or through other means to assign a risk assessment. The Government may contact references other than those identified by the offeror and use that information in the past performance evaluation. Out-dated or incorrect information will be noted for clarification with the offeror, as appropriate. Results of all reference checks conducted will be fully documented by the Government and considered in developing the consensus risk assessment rating during the evaluation. If the offeror does not have any past performance information, the offeror will be given a neutral rating and will not be evaluated favorably or unfavorably for this criterion. If the Government's attempts at gathering performance information fail, and the offeror has been notified and not able to correct this problem, the offeror will be given a neutral rating and will not be evaluated favorably or unfavorably for this area.

**Price** proposals will be evaluated for realism, completeness, reasonableness, and a total evaluated price to the Government will be calculated. The results of the price evaluation will be considered while performing an integrated assessment of the proposals leading to selection of a successful offeror. Unrealistically low estimates, initially or subsequently, may be grounds for eliminating a proposal from competition, either on the basis the offeror does not understand the requirement or the offeror has made an improvident proposal. The burden of proof regarding price credibility rests with each offeror.

The offeror's pricing information will be evaluated relative to the following:

- i. Realism. The Government will evaluate the compatibility of the proposed prices and rates with the offeror's technical approach to accomplishing the tasks identified in the Performance Work Statement (PWS). The Government will assess each proposal to ensure that realistic prices and rates are included to allow the offeror the ability to perform all contractual requirements. An offeror who submits unrealistically low pricing may be excluded from the competitive range. The data provided should be consistent with the various elements of the offeror's technical proposal.
- ii. Completeness. The Government will evaluate completeness of the price proposal to determine that all price data have been submitted in compliance with the solicitation. The offeror must provide all the data that is necessary to support the offer.
- iii. Reasonableness. The offeror will be evaluated to determine that proposed prices are neither excessive nor insufficient for the proposed items. In addition, the reasonableness of the offeror's methodology for developing the price proposal will be evaluated.

The offeror's total evaluated price will also be used in the overall assessment of price reasonableness. The Government will calculate the offeror's total evaluated price by summing

the offeror's proposed annual price for each contract line item for the base and all four option years.

(b) "Options." The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of Provision)

**52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS--COMMERCIAL ITEMS (AUG 2009)**

An offeror shall complete only paragraph (b) of this provision if the offeror has completed the annual representations and certifications electronically at <http://orca.bpn.gov>. If an offeror has not completed the annual representations and certifications electronically at the ORCA website, the offeror shall complete only paragraphs (c) through (m) of this provision.

(a) Definitions. As used in this provision--

"Emerging small business" means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

"Forced or indentured child labor" means all work or service--

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

"Inverted domestic corporation" means a foreign incorporated entity which is treated as an inverted domestic corporation under 6 U.S.C. 395(b), i.e., a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

"Manufactured end product" means any end product in Federal Supply Classes (FSC) 1000-9999, except--

- (1) FSC 5510, Lumber and Related Basic Wood Materials;
- (2) Federal Supply Group (FSG) 87, Agricultural Supplies;
- (3) FSG 88, Live Animals;
- (4) FSG 89, Food and Related Consumables;
- (5) FSC 9410, Crude Grades of Plant Materials;
- (6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) FSC 9610, Ores;
- (9) FSC 9620, Minerals, Natural and Synthetic; and
- (10) FSC 9630, Additive Metal Materials.

"Place of manufacture" means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

"Restricted business operations" means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate--

(1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;

(2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;

"Service-disabled veteran-owned small business concern"--

(1) Means a small business concern--

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled



veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and size standards in this solicitation.

"Veteran-owned small business concern" means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned business concern" means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

"Women-owned small business concern" means a small business concern--

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b)

(1) Annual Representations and Certifications. Any changes provided by the offeror in paragraph (b) (2) of this provision do not automatically change the representations and certifications posted on the Online Representations and Certifications Application (ORCA) website.

(2) The offeror has completed the annual representations and certifications electronically via the ORCA website at <http://orca.bpn.gov>. After reviewing the ORCA database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications--Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201), except for paragraphs /\_/\_/.

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it /\_/\_/ is, /\_/\_/ is not a small business concern.

(2) Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c) (1) of this provision.] The offeror represents as part of its offer that it /\_/\_/ is, /\_/\_/ is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c) (2) of this provision.] The offeror represents as part of its offer that it /\_/\_/ is, /\_/\_/ is not a service-disabled veteran-owned small business concern.

(4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c) (1) of this provision.] The offeror represents, for general statistical purposes, that it /\_/\_/ is, /\_/\_/ is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c) (1) of this provision.] The offeror represents that it /\_/\_/ is, /\_/\_/ is not a women-owned small business concern.

NOTE: Complete paragraphs (c)(6) and (c)(7) only if this solicitation is expected to exceed the simplified acquisition threshold.

(6) Women-owned business concern (other than small business concern). [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is a women-owned business concern.

(7) Tie bid priority for labor surplus area concerns. If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price: \_\_\_\_\_

(8) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(i) [Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the designated industry groups (DIGs).] The offeror represents as part of its offer that it /\_/ is, /\_/ is not an emerging small business.

(ii) [Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or designated industry groups (DIGs).] Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Number of Employees	Average Annual Gross Revenues
<input type="checkbox"/> 50 or fewer	<input type="checkbox"/> \$1 million or less
<input type="checkbox"/> 51-100	<input type="checkbox"/> \$1,000,001-\$2 million
<input type="checkbox"/> 101-250	<input type="checkbox"/> \$2,000,001-\$3.5 million
<input type="checkbox"/> 251-500	<input type="checkbox"/> \$3,500,001-\$5 million
<input type="checkbox"/> 501-750	<input type="checkbox"/> \$5,000,001-\$10 million
<input type="checkbox"/> 751-1,000	<input type="checkbox"/> \$10,000,001-\$17 million
<input type="checkbox"/> Over 1,000	<input type="checkbox"/> Over \$17 million

(9) [Complete only if the solicitation contains the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or FAR 52.219-25, Small Disadvantaged Business Participation Program--Disadvantaged Status and Reporting, and the offeror desires a benefit based on its disadvantaged status.]

(i) General. The offeror represents that either--

(A) It /\_/ is, /\_/ is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(B) It /\_/ has, /\_/ has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) /\_/ Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns. The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(9)(i) of this provision

is accurate for the small disadvantaged business concern that is participating in the joint venture. [The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture:\_\_\_\_\_.]

(10) HUBZone small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that--

(i) It /\_/ is, /\_/ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It /\_/ is, /\_/ is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:\_\_\_\_\_.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Representations required to implement provisions of Executive Order 11246-

(1) Previous contracts and compliance. The offeror represents that--

(i) It /\_/ has, /\_/ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It /\_/ has, /\_/ has not filed all required compliance reports.

(2) "Affirmative Action Compliance." The offeror represents that--

(i) It /\_/ has developed and has on file, /\_/ has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR Parts 60-1 and 60-2), or

(ii) It /\_/ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror neednot report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) Buy American Act Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act-Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act-Supplies."

(2) Foreign End Products: [List as necessary]

|Line Item No.|Country of Origin|


(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)

(1) Buy American Act--Free Trade Agreements--Israeli Trade Act Certificate. (Applies only if the clause at FAR 52.225-3, Buy American Act--Free Trade Agreements--Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms "Bahrainian, Moroccan, Omani, or Peruvian end product," "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "end product," "foreign end product," "Free Trade Agreement Country," "Free Trade Agreement Country end product," "Israeli end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act--Free Trade Agreements--Israeli Trade Act."

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian or Moroccan end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act--Free Trade Agreements--Israeli Trade Act":

FREE TRADE AGREEMENT COUNTRY END PRODUCTS (OTHER THAN BAHRAINIAN, MOROCCAN, OMANI, OR PERUVIAN END PRODUCTS) OR ISRAELI END PRODUCTS:

Line Item No.	Country of Origin

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled "Buy American Act--Free Trade Agreements--Israeli Trade Act." The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of "domestic end product."

Other Foreign End Products:

Line Item No.	Country of Origin

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) Buy American Act--Free Trade Agreements--Israeli Trade Act Certificate, Alternate I. If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American Act--Free Trade Agreements--Israeli Trade Act":

Canadian End Products:

Line Item No.

(3) Buy American Act--Free Trade Agreements--Israeli Trade Act Certificate, Alternate II. If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act--Free Trade Agreements--Israeli Trade Act":

Canadian or Israeli End Products:

Line	Item No.	Country of Origin

(4) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(4)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

Other End Products:

Line	Item No.	Country of Origin

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-ade or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) Certification Regarding Responsibility Matters (Executive Order 12689)."  
(Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals--

(1) /\_/ Are, /\_/ are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2) /\_/ Have, /\_/ have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;

(3) /\_/ Are, /\_/ are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

(4) /\_/ Have, /\_/ have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(i) Taxes are considered delinquent if both of the following criteria apply:

(A) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(B) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) Examples.

(A) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax

liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(C) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(D) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. §362 (the Bankruptcy Code).

(i) Certification Regarding Knowledge of Child Labor for "Listed End Products (Executive Order 13126)." \_\_\_\_\_

(1) "Listed end products."

Line	End Product	Listed Countries of Origin

(2) "Certification."

[ ] (i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

[ ] (ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) Place of manufacture. For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly--

[ ] (1) In the United States; or

[ ] (2) Outside the United States.

(k) Certificates regarding exemptions from the application of the Service Contract Act.

\_\_\_\_\_ (1) Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003-4(c)(1). The offeror [ ] does [ ] does not certify that;

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR 22.1003-4(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

\_\_\_\_\_ (2) Certain services as described in FAR 22.1003-4(d) (1). The offeror [ ] does [ ] does not certify that;

(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR 22.1003-4(d) (2) (iii));

(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k) (1) or (k) (2) of this clause applies--

(i) If the offeror does not certify to the conditions in paragraph (k) (1) or (k) (2) and the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k) (1) or (k) (2) of this clause or to contact the Contracting Officer as required in paragraph (k) (3) (i) of this clause.

(1) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701).

(1) All offerors must submit the information required in paragraphs (1) (3) through (1) (5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(C) (3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) Taxpayer Identification Number (TIN).

[ ] TIN: \_\_\_\_\_

[ ] TIN has been applied for \_\_\_\_\_

[ ] TIN is not required because:

[ ] Offeror is a nonresident alien, foreign corporation, or foreign partnership in the United States.

[ ] Offeror is an agency or instrumentality of a foreign government.

[ ] Offeror is an agency or instrumentality of the Federal government.

(4) Type of organization

(5) Common parent

(m) Restricted business operations in Sudan. By submission of its offer, the offeror certifies that the offeror does not conduct any restricted business operations in Sudan.

(n) Prohibition on Contracting with Inverted Domestic Corporations.

(1) Relation to Internal Revenue Code. A foreign entity that is treated as an inverted domestic corporation for purposes of the Internal Revenue Code at 26 U.S.C. 7874 (or would be except that the inversion transactions were completed on or before March 4, 2003), is also an inverted domestic corporation for purposes of 6 U.S.C. 395 and for this solicitation provision (see FAR 9.108).

(2) Representation. By submission of its offer, the offeror represents that it is not an inverted domestic corporation and is not a subsidiary of one.

(End of provision)